



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MININGMichael O. Leavitt
GovernorKathleen Clarke
Executive DirectorLowell P. Braxton
Division Director

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OK

April 24, 2002

CERTIFIED RETURN RECEIPT

7099 3400 0016 8895 9642

David Miller, Business Manager
Lodestar Energy, Inc.
HC 35 Box 370
Helper, Utah 84526Re: Proposed Assessment for State Violation No. N02-46-2-1, Lodestar Energy, Inc., Horizon
Mine, C/007/020, Compliance File Outgoing

Dear Mr. Miller:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R645-401.

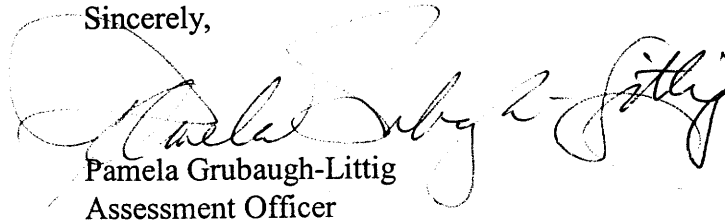
Enclosed is the proposed civil penalty assessment for the above referenced violation. The violation was issued by Division Inspector, Peter Hess, on March 21, 2002. Rule R645-401-600 et. seq. has been utilized to formulate the proposed penalty. By these rules, any written information, which was submitted by you or your agent within fifteen (15) days of receipt of this Notice of Violation, has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R645-401-700, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Pamela Grubaugh-Littig
Assessment Officer

Enclosure

cc: OSM Compliance Report
Vickie Southwick, DOGM

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**WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING**

COMPANY / MINE Lodestar Energy, Inc./Horizon Mine

PERMIT C/007020

NOV / CO # N02-46-2-1

VIOLATION 1 of 1

ASSESSMENT DATE April 18, 2002

ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY (Max. 25 pts.)

- A. Are there previous violations, which are not pending or vacated, which fall one (1) year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
_____	_____	_____
_____	_____	_____

1 point for each past violation, up to one (1) year
5 points for each past violation in a CO, up to one (1) year
No pending notices shall be counted

TOTAL HISTORY POINTS _____

II. SERIOUSNESS (Either A or B)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or HINDRANCE (B) violation? (A) Event

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

Impacts off the permit area/environmental harm

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

******Mine sludge and coal fines were visible in mine water being discharged from the undisturbed bypass culvert (discharge point, UDES 002A, which is located 1,020 feet up drainage in Portal Canyon) into Jewkes Creek (off the permit area) on March 15, 2002 during a routine inspection. (This activity had been noted by Division of Water Quality on March 12, 2002, but was not report to the Division of Oil, Gas, and Mining at that time). Coal fines and mine sludge accumulated along the edge of Jewkes Creek.***

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 10

PROVIDE AN EXPLANATION OF POINTS:

******There was no evidence of a fish kill, per a Division of Wildlife report dated March 22, 2002. There may be potential damage unidentified to date. The TSS on March 12, 2002 was reported as 300 mg/l (Division of Water Quality sample analysis), and on March 15, 2002 was reported as 356 mg/l (Division of Oil, Gas, and Mining sample analysis). (The daily maximum allowable limit for TSS is 70 mg/l which was established in the UPDES permit #UTG0400, Section F).***

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? _____
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 30

III. NEGLIGENCE (Max 30 pts.)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE: Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 25

PROVIDE AN EXPLANATION OF POINTS:

****The permittee pumped directly from the mine section to the outside (which enhanced production). This activity occurred on March 12, 2002, as evidenced by the water monitoring Department of Health results (samples taken by Department of Environmental Quality, Division of Water Quality) that exemplified high TSS levels (300 mg/l or 230 mg/l over the limit). There were also high levels on March 15, 2002 (356 mg/l or 286 mg/l over the limit). It is unknown if the pumping was continuous from March 12, 2002 through March 15, 2002, but on Tuesday and Friday very high TSS was noted by the results of the sample of both the Division of Water Quality and the Division of Oil, Gas, and Mining.*

The permittee is fully aware of the UPDES permit and mine pumping conditions.

IV. GOOD FAITH (Max 20 pts.)

(Either A or B)

(Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? EASY

ASSIGN GOOD FAITH POINTS -11

PROVIDE AN EXPLANATION OF POINTS:

******The permittee took immediate action to change the pumping system and discontinue discharging mine sludge into Jewkes Creek after the verbal cessation was ordered on March 15, 2002. It took less than 30 minutes to correct the problem (the abatement for the cessation order). The permittee submitted the plan for abatement of the violation (modified plan for the "Horizon Mine Water Sump and Pumping System") on April 3, 2002. This amendment was reviewed and approved with no deficiencies on April 10, 2002.***

V. **ASSESSMENT SUMMARY**

NOTICE OF VIOLATION # <u>N02-26-2-1</u>	
I.	TOTAL HISTORY POINTS <u>0</u>
II.	TOTAL SERIOUSNESS POINTS <u>30</u>
III.	TOTAL NEGLIGENCE POINTS <u>25</u>
IV.	TOTAL GOOD FAITH POINTS <u>-11</u>
	TOTAL ASSESSED POINTS <u>44</u>
	TOTAL ASSESSED FINE <u>\$ 760</u>

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